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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,367	12/04/2003	Frank Richard Cichocki JR.	ETH5110USNP	6984
27777	7590	12/05/2007		
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER LANG, AMY T	
			ART UNIT	PAPER NUMBER
			3731	
			MAIL DATE	DELIVERY MODE
			12/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

11

Office Action Summary

Application No.

10/727,367

Applicant(s)

CICHOCKI, FRANK RICHARD

Examiner

Amy T. Lang

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,7 and 9-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6 and 8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/11/2005, 12/04/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-10, and Species B, Figures 4B and 4c, in the reply filed on 9/24/2007 is acknowledged.
2. Claims 11-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/24/2007. However, applicant also elects Species B and identifies claims 1, 2, 4, 6, and 8-10 as encompassed by Figures 4B and 4C. Therefore, claims 3, 5, and 7 are also withdrawn from further consideration as being drawn to a nonelected Species. Claims 9 and 10 comprises the limitation of an inflatable connector as shown in Figure 10. Therefore, it is the examiner's position that claims 9 and 10 are encompassed by Species D and not Species B. Claims 9 and 10 are also withdrawn from further consideration as being drawn to a nonelected Species. Claims 1, 2, 4, 6, and 8 are pending and the rejection of such is set forth below.

Claim Objections

3. Claim 8 is objected to because of the following informalities: Claim 8 recites "the coated fiber tow" which does not have proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1 and 4** are rejected under 35 U.S.C. 102(b) as being anticipated by Foerster (US 2002/0029066 A1).

With regard to **claim 1**, Foerster discloses a hollow braided suture having proximal and distal ends (see entire document, specifically abstract). As shown in Figures 11 and 12, the suture material is threaded back upon itself through the inner lumen. Therefore, the inner suture material forms a passageway that is coaxial with the outer braided suture material. Additionally, the distal end of the inner passageway is disposed between the proximal and distal ends of the outer braided suture material.

With regard to **claim 4**, since the inner suture material comprises a hollow suture, it clearly overlaps the instantly claimed lumen of a tube.

6. **Claims 1, 4, 6, and 8** are rejected under 35 U.S.C. 102(b) as being anticipated by Burton (US 4,159,720).

With regard to **claim 1**, Burton discloses a braided suture having proximal and distal ends (see entire document). As shown in Figure 14, the suture comprises a hollow inner passageway coaxial with the braided suture (column 4, lines 46-49). A prescribed fluid runs through this passageway to facilitate healing of the damaged

tissue (column 2, lines 13-18). However, Burton does not specifically disclose wherein the distal end of the passageway is disposed between the proximal and distal ends of the braided suture. If this were not the case, then the distal end of the passageway would be open, allowing the fluid to directly flow into the passageway. However, Burton teaches that the ends of the suture absorb the fluid (column 5, lines 6-8). Therefore, since the fluid is absorbed, suture material must be present at the distal end to take in the fluid.

With regard to **claim 4**, it is the examiner's position that the inner passageway is a lumen of a tube.

With regard to **claim 6**, holes (102) connect the inner lumen to the outer surface of the suture tube (column 4, lines 46-49; Figure 14).

With regard to **claim 8**, the proximal end of the suture is connected to a needle (60) or to an intravenous delivery system (10) (Figures 6 and 10; column 3, lines 11-25; column 5, lines 38-54). Therefore a connector is present on the proximal end of the passageway to provide the connection between the passageway and needle or delivery system.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Foerster (US 2002/0029066 A1).

Foerster discloses a hollow braided suture having proximal and distal ends (see entire document, specifically abstract). As shown in Figures 11 and 12, the suture material is threaded back upon itself through the inner lumen. Therefore, the inner suture material forms a tube that is coaxial with the outer braided suture material. Since the tube is threaded through the suture material as shown in Figure 10, the suture material inherently has at least one opening through which the tube is threaded ([0080]). However, Foerster does not specifically disclose the ratio of the outer diameter of the tube to the inner diameter of the tube. However, it would have been obvious to one of ordinary skill at the time of the invention for Foerster to also comprise a tube diameter ratio of greater than 1.7, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (*In re Aller*, 105 USPQ 233 (CCPA 1955)).

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy T. Lang whose telephone number is 571-272-9057. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

11/27/2007

ATL


Todd E. Manahan
SPE 3731